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*Relations industrielles / Industrial Relations*, vol. 27, n° 4, 1972, p. 736-745.

Pour citer cet article, utiliser l'information suivante :

URI: <http://id.erudit.org/iderudit/028335ar>

DOI: 10.7202/028335ar

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# Technological Change and the CLC

**Gordon McCaffrey**

*This paper presents a union position on Bill C-183  
by looking at the pros and cons of this legislation and by  
examining what still needs to be done.*

Bill C-183, a Bill to amend the Canada Labour Code, Part V, is ostensibly aimed at bringing the law for settling industrial disputes in the federal jurisdiction up to date. Today I will try to tell you what the labour movement likes about the Bill, what we don't like, and what else in the area of federal policy needs to be done.

When enacted the Bill would affect only a small minority of Canadian workers — half a million workers in railway and interprovincial truck transport, longshoring, tug boat operation, air transportation, communications, radio and television broadcasting and banking. But its importance goes far beyond its limited jurisdiction. As employer representatives have stated in apprehension, the Bill could well become a model for provincial governments looking to revise their labour relations legislation. Already the Government of Saskatchewan has enacted legislation requiring 90 days' notice of technological change which could affect the employment security of a significant number of workers. And the recently released Report of the Royal Commission on Labour Legislation in the Province of Newfoundland, under Maxwell Cohen of McGill University, recommended that Newfoundland's labour legislation « invoke the principle that all matters affecting terms and conditions of employment must be negotiated at some point ».

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## WHAT WE LIKE ABOUT BILL C-183

**The Bill Endorses Free Collective Bargaining**

Hon. Martin O'Connell, Minister of Labour, has said that the motivation behind the introduction of the Bill was the need to take into account the accelerated rate of technological change and the need for some adjustment in the pattern of dispute settlement. The Bill takes the position that adjustment to the adverse effects of technological change can best be accommodated through collective bargaining.

The philosophy of the Bill is set forth in the preamble which states in the first paragraph that « there is a long tradition in Canada of labour legislation and policy designed for the promotion of the common well-being through the encouragement of free collective bargaining and the constructive settlement of disputes ». It might be more correct, of course, to declare that the aim of labour legislation in Canada has been to keep workers in their place, to resist the encroachment of unions into the jealously guarded area of so-called management rights, and to promote industrial peace. If it can be held that public policy has encouraged collective bargaining, it is also true that public policy has been frustrated by employer intransigence. Union organizers still meet management intimidation during organizing campaigns. When unions are certified as bargaining agents, they frequently encounter severe resistance in negotiating a first contract. Many employers prefer strike-breaking to bargaining in good faith. Labour historians traditionally speak of the *struggle* to achieve a decent wage, safe working conditions, holidays with pay, time for workers to spend with their families, or pensions. Use of the word struggle comes naturally. Nobody has given anything away. Labour legislation and government policy have been helpful, but in a large number of cases legislation has merely rubber-stamped gains made on the picket line and by collective bargaining. But we don't expect to win all the battles by legislation alone. Nor are we deluded into believing that this Bill, when enacted, is going to cause miracles to happen.

The preamble also says that « Canadian workers, trade unions and employers recognize and support freedom of association and free collective bargaining as the bases of effective industrial relations for the determination of good working conditions and sound labour-management relations ». That's an idealistic statement. We'd like to believe it is true. About 30 percent of Canadian workers are organized and take advantage of the right to collective bargaining. Workers were not the first to do so. Concerted action has been used since antiquity by the powerful

and the well-to-do, including priests, doctors, lawyers, and other professionals. But the value of organization has filtered down through society by a slow process. The poor who could use it to their advantage are still a long way from enjoying it. Over the next three years, the Canadian Labour Congress will spend upwards of \$1,000,000 to organize white collar workers. You can be sure that employers will fight our efforts tooth and nail. We know that much from experience. Having said all that we are glad the legislation is finally recognizing freedom of association and free collective bargaining as the pillars of the labour-management relationship.

The section of the preamble which is most impressive is the fourth paragraph:

« ... the Parliament of Canada desires to continue and extend its support to labour and management in their co-operative efforts to develop good relations and constructive collective bargaining practices, and deems the development of good industrial relations to be in the best interest of Canada and ensuring a just share of the fruits of progress to all ».

Earlier this year the Congress held a conference on industrial democracy. The conference proceeded on the assumption that workers are demanding, and will get, one way or another, a larger voice and vote in the vital decisions affecting their income, working conditions and job security. The options which were examined included actual operating industrial relations systems or hypothetical models in which government makes all the important decisions; in which employers make all the decisions; in which workers make all the decisions; or in which governments and employers and workers co-operate in reaching industrial relations decisions. Although the conference had no policy-making authority, you will be interested in the fact that the consensus gave overwhelming support to the tripartite relationship, and that it endorsed collective bargaining as providing the procedures most likely to ensure that workers will get a fair share of the wealth which they help to produce. An integral part of the conference report was the need first, to organize the unorganized workers so that they may also share in the wealth of society; second, to increase the efforts of organized labour aimed at negotiating with respect to any and all matters affecting income, working conditions and job security; and third, to take a more effective role in the political process so as to bring about a more equitable society.

**The Bill Would Make Technological Change Bargainable**

When you get through all the fine print, the Bill appears to do two things with respect to technological change. First, it would break fresh ground in Canada by requiring that technological change become a bargainable issue. Second, it would place squarely on the employer and the union the responsibility for working out a formula for technological change to suit their particular circumstances in each bargaining situation.

The Canadian Labour Congress has consistently taken the position that technological change is bargainable since new technology inevitably affects working conditions, working relationships and security. Translated into every day job terms, technology has been responsible for machine production which contributed to dangerous working conditions, industrial accidents, shift work, continuous operations, the speed-up, monotony,, piece work, deskilling of jobs, contracting out, excessive levels of unemployment, regional disparities, seasonal lay-offs, and plant removals. Technology, of course, has also freed workers from backbreaking work, it has vastly increased the number and range of products and services, and it can provide a healthier job environment. But there is no denying its disruptive influence in labour-management relations. We support the introduction of new technology which results in greater benefit for organized labour and the public at large ; at the same time, we insist that the cost of introducing new technology must not fall unduly on the shoulders of workers.

Max Salzman, the NDP Member of Parliament for Waterloo, expressed this view succinctly in a recent speech. Mr. Salzman said : « The great enemy of the workingman in the plant is fear, fear of the unknown. You must be a workingman to understand that fear.. True, the businessman has his own fears, his own problems. He wonders about solvency ; and he must compete with others. He has his worries. One tends to forget that the man working in the plant also is beset by worries. He is worried about his job continuing, about being displaced by a machine, about what will happen to him. His worries are genuine ».

The second implication of the technological change clauses — the intention of the Bill to leave employers and unions to work out the impact of change without interference by government — is a responsible approach well in keeping with the traditions of free collective bargaining. We do not want to continue under a system in which decisions resulting in innovation are made exclusively by management. The employer's prime concern is the making of profits. He is not primarily concerned

with such matters as unemployment or pollution which result from his decisions. Nor do we want to revert to a system in which all these decisions will be made by a panel of so-called experts, or a « public interest » board or court divorced from the realities of the industrial relationship.

In its submission to the House of Commons Standing Committee on Labour, Manpower and Immigration, the Congress repeated its previously stated position that we do not regard the provisions of the Bill as ideal. We have reservations concerning the extent to which the right to bargain on technological change may be exercised freely. We protested the exclusion of contracts which will be in force at the time the Bill becomes law. But we supported absolutely the principle that the effects of technological change should be negotiated.

#### **Streamlined Certification Procedures**

We welcome the provisions which reduce the percentage of employees which a union must show as members before a certification vote can be ordered. Similar provisions have been enacted elsewhere in recent times with good results. This amendment, more than any other, could help extend benefits of collective bargaining to those who are now unorganized.

#### **WHAT WE DON'T LIKE ABOUT BILL C-183**

Turning now to the things that we don't like about the Bill — and I will attempt to relate my remarks primarily to technological change — I can be more brief.

#### **Discrimination Against Individuals Affected by Technological Change**

Bill C-183 appears to favour « big labour » and discriminate against individual workers in the case of lay-offs or job transfers resulting from technological change. The Bill falls into this trap by establishing the criterion that *significant numbers* of employees would have to be adversely affected before the provisions of the Bill would apply. The preamble reminds us that Canada is a party to convention No. 87 of the International Labour Organization and therefore is pledged to denounce discrimination in employment, including job security. By opting for criteria based on « significant » numbers, the Board could come to the rescue of workers deemed to be important and completely ignore workers who would be « unimportant » as far as numbers are concerned. The danger would lie in the tendency to use the legislation to put pressure on lay-offs

which could be politically embarrassing, but technological change affecting one or a few employees at a time would be written off as an inevitable cost of progress. This is not good legislation. It is not justice. In its brief to the Commons committee, the Canadian Railway Labour Association argued that good legislation must be first, *knowable*, but the meaning of the term « significant » as it is used in Bill C-183 is not knowable. Second, the law should apply equally to all citizens. If it is left up to the Board to define « significant » numbers, the law will not apply equally to all workers who are adversely affected.

#### **Definition of "Strike"**

The Bill seeks to make the terms « slowdown » and « concerted activity » synonymous with the term « strike ». This change would create more problems than it would solve. First, it is difficult to understand how slowdown could be considered to be a strike, or even a substitute for a strike. Second, the suggestion is that a union or workers are the causal factor in all slowdowns. This is obviously not the case. On the other hand, a loss of morale by workers could lead to their working more slowly than previously. A slowdown may be a valuable safety valve indicating a deep seated labour-management problem. In some cases a slowdown may be the equivalent of work-to-rule. This raises a fundamental question: How can an act that is legal in terms of the employer's own operating rules be considered illegal by the Labour Code ? And even if it were judged illegal, how could it be terminated ? A back-to-work order would not be effective, since the workers have never ceased working. This is a dilemma which cannot be resolved by recourse to the legal gimmick of calling a slowdown a strike.

#### **Composition of Canada Labour Relations Board**

The Canada Labour Relations Board has, by statutory provision, been a representative body. The present legislation provides for a Board consisting of « an equal number of members representative of employees and employer ». The Congress believes that the essence of the present Board's performance lies in its representative character. We acknowledge the assurances of the present Minister, as well as those of the previous Minister on the occasion of the introduction of Bill C-253, that the practice of seeking recommendations from the parties of interest with respect to appointments would continue to be followed. But Ministers come and go. We would feel more confident if the present practice were specified in the Bill. As the Bill stands, the door is opened to the appointment

of so-called neutral persons, or persons who have only the appearance of representing the parties of interest. There is also the danger that at some future date appointments might be made on the basis of political patronage. We are also disturbed by the proposals which give the Board the trappings of a labour court. Our limited experience with labour tribunals which operate on a judicial, or quasi-judicial, basis convinces us that a shift away from representation of the parties should be avoided at all costs. In short, the character of the Board is extremely important in the entire collective bargaining process. We want the provisions for technological change which the Bill provides, but we do not want to lose the advantages which this amendment would bring about by the introduction of a Board which could prove to be entirely unsympathetic to bargaining.

#### **WHAT STILL REMAINS TO BE DONE**

The current debate over the merits of Bill C-183 might leave the impression with the uncommitted public that either the provisions for technological change will resolve all our problems of industrial conversion, or that the inclusion of the technological change provisions will seriously undermine Canadian efforts to become competitive. In fact, preoccupation with the Bill could divert public attention from other aspects of industrial conversion which can have serious implications for job security and income distribution.

#### **Full Employment**

Workers welcome technological change which makes life more pleasant, work easier, and pay higher. They predictably and consistently run for cover in the face of technological change which reduces job security. This is an attribute which they share with businessmen, politicians, and even academics. Everybody, including workers, would welcome technological change with open arms if the change brought only benefits, in roughly equal amounts to everybody. Oddly enough, this is not the way technological change distributes wealth. Even workers who themselves were adversely affected in their jobs would not protest, at least not for long, if they could be confident that they would be able to move to another job, even a different kind of job, without too much personal suffering. Only a full employment policy, effectively pursued, can establish such confidence.

#### **Training for Change**

We have been told repeatedly in recent years that workers now entering the workforce must expect to move into three or four unrelated



jobs during their working life. Unfortunately, despite billions of dollars spent on education of various kinds, workers are still not preparing themselves, or being prepared by the educational institutions, to make the moves that are required by technological change. In addition to the institutions which serve the youthful population, we have publicly-supported manpower training for the adult population including skill training, basic training for skill development, apprenticeship training, language training, training in industry, and small business management training. For the program to be successful, employers must be persuaded to give longer advance notice of the changes they anticipate making, educational institutions must be geared for innovating training courses in advance of the need for skilled workers, and governments must be prepared to maintain workers with living allowances equal to regular pay during training.

### **Opportunities for Women**

In many, if not in most jobs, technology has made it possible for women to compete on a basis of equality with men. Women should now be free to make the choice between work in the house and work in the office, shop or plant ; and they should be free to choose among the entire spectrum of jobs and expect equal treatment with men in hiring, pay and promotions. The Report of the Royal Commission on the Status of Women laid bare the vast amount of discrimination against women in the job market, and several governments have taken important steps to improve the situation with equal opportunity and maternity leave legislation. But new technology and all the reports and legislation cannot complete the job. A fundamental change in attitudes is essential.

### **Improved Mobility**

In appearances before the Commons committee, employer representatives frequently have taken the position that there is no place in Bill C-183 for a clause requiring negotiations with unions on technological change. They have stated that public measures, such as unemployment insurance and manpower retraining, and private provisions, such as severance pay under the collective agreement should take care of society's and the employer's responsibilities with respect to workers who are laid-off. But unemployment insurance does not constitute a satisfactory substitute for employment income, and manpower retraining does not always lead to a new job. Furthermore, men as young as 45 years of age who are laid-off find it difficult to get another job because they do not fit easily into a company pension plan. There is nothing in Bill C-183

which can assist workers in such predicament. We must look to more effective public policies and to co-operative efforts among employers to resolve these difficulties.

## CONCLUSION

Bill C-183 makes an important advance in labour-management relations by recognizing the fact that technological change can have a fundamental impact on job security and income security, and therefore is an appropriate matter for collective bargaining. It places emphasis on collective bargaining as the means to resolving the fundamental differences between employers and organized workers. There are many hurdles to be crossed, including the important matter of interpretation of such terms as « significant numbers », but basically the legislation marks a step forward. However, Canadians should not be misled into believing that this Bill provides a solution to all the problems of industrial conversion. It does not displace the need for a full employment policy, a more effective manpower training policy, legislation facilitating the mobility of workers from one employer to another and from one province to another, and a new approach to a higher level of income maintenance for the unemployed and the underemployed.

## Le CTC et les changements technologiques

Lorsque le bill C-183 sera sanctionné, il touchera seulement environ un demi million de travailleurs dans les industries du chemin de fer, du transport inter-provincial par camion, de l'arrimage, des bateaux-remorqueurs, du transport aérien, des communications, de la radio et de la télévision et des langues. Mais il pourrait aussi devenir un modèle pour les gouvernements provinciaux en quête de reviser leur législation du travail.

### CE QUE NOUS AIMONS DU BILL C-183

#### *Le bill endosse la négociation collective libre*

Fondamentalement, le bill soutient que le meilleur moyen de traiter le problème des changements technologiques, c'est par la négociation collective. Cela a toujours été la position des syndicats.

#### *Le bill rendrait les changements technologiques négociables*

Ceci constituerait en fait une nouveauté au Canada. Il incomberait aux parties de s'entendre dans chaque circonstance. L'intervention gouvernementale ne surgirait que si les parties étaient incapables de s'entendre. Les syndicats admettent les changements technologiques qui entraînent des avantages plus grands pour les tra-

vailleurs syndiqués et le public. Cependant, les travailleurs ne doivent pas payer injustement le prix de l'introduction de tels changements technologiques.

#### *Les procédures d'accréditation*

Nous applaudissons les clauses qui exigent un pourcentage de représentation moindre par le syndicat avant de pouvoir prendre le vote d'accréditation. Ce changement contribuerait à étendre les avantages de la négociation collective aux non-syndiqués.

#### CE QUE NOUS N'AIMONS PAS DU BILL C-183

##### *Discrimination contre les individus touchés par les changements technologiques*

Le bill C-183 favorise le « big labour » mais discrimine contre les travailleurs individuels touchés par des mises-à-pied ou des mutations suite à des changements technologiques. En fait, ceci est le résultat du critère de « nombre important ». Ce n'est ni bonne législation ni justice que de ne pas s'occuper des cas individuels sous prétexte du coût inévitable du progrès.

##### *La définition de la grève*

Le bill cherche à rendre synonyme au terme « grève » les expressions « ralentissement du travail » et « activité concertée ». Ceci est difficile à comprendre vu qu'un ralentissement du travail peut résulter d'une baisse du moral des travailleurs, ou être un indicateur valable d'un problème profond de relation patronale-ouvrière.

##### *La composition du Conseil canadien des relations du travail*

Dans la loi actuelle, ce Conseil se compose d'un nombre égal de représentants des travailleurs et des employeurs. L'efficacité du Conseil dépend de sa représentativité. Le bill prévoit la désignation de personnes dites neutres. Il y a là danger que les nominations soient faites par favoritisme politique.

#### CE QUI RESTE À FAIRE

Les débats sur les avantages de la nouvelle loi dans les questions de changements technologiques peuvent donner l'impression qu'elle règle tous les problèmes. Il ne faut pas oublier qu'avec les réductions d'emploi que causent les conversions industrielles il est aussi important de noter la nécessité de nouvelles mesures visant le plein emploi, la nécessité de formation efficace de la main-d'œuvre, de mobilité améliorée et de nouvelles opportunités pour la main-d'œuvre féminine.